

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1017 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

=====

JOSHI RATILAL PANAJI - Applicant(s)
Versus
DABGAR NAGINBHAI CHIMANLAL - Opponent(s)

=====

Appearance :

MR SHIVANG SHUKLA for DC DAVE for Petitioner No(s).: 1.
MR MC SHAH for Respondent No(s).: 1.

=====

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 13/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 15th February, 1994 passed by the learned Joint District Judge, Nadiad in Civil Appeal No. 23 of 1988, the respondent-defendant in Regular Civil Suit No. 101 of 1981 has preferred the present Revision Application under Section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondent-plaintiff is the owner of the suit house bearing Municipal Census No. 7/1/5, situated at Anand. The suit house was leased to the petitioner-defendant for a monthly rent of Rs. 40/=. The rent was payable by month. The plaintiff instituted Regular Civil Suit No. 101 of 1981 in the Court of learned Civil Judge {JD}, Anand for recovery of possession of the suit house and the amount of rent due, and *mesne* profits. The plaintiff alleged that the suit house was leased to the defendant for his personal residence alone; that the defendant had acquired an alternative accommodation and moved into such accommodation; that the defendant had unlawfully sublet or transferred the suit house. It was alleged that the defendant had in contravention of conditions of tenancy caused damage and wastage to the suit house and made material alterations and erected permanent structure in the suit house. The defendant had acquired suitable alternative accommodation and that the defendant was tenant in default as he was in arrears of rent since 1st January, 1981. The plaintiff also alleged that the suit house was leased to the defendant for residence of himself and his family. Instead, the defendant had, in contravention of the terms of tenancy,

changed the user of the suit house and used the suit house for lodging of his employees and for storing grocery and goods and other paraphernalia of his business. The suit was contested by the defendant vide written statement Exh. 16. He denied the allegations made by the plaintiff. The defendant also raised dispute as to the standard rent of the suit house. It was stated that he was in catering business and the alternative accommodation was temporarily taken on rent to house his employees and that the possession of the said alternative accommodation was handed over to the concerned landlord on 18th June, 1981. The learned Civil Judge, by judgment and order dated 17th December, 1987 held that the agreed rent of Rs. 40/= was the standard rent of the suit house and dismissed the suit for recovery of possession of the suit house but passed decree for the amount of rent due.

Feeling aggrieved, the plaintiff preferred Civil Appeal No. 23 of 1989 in the Court of learned District Judge, Kheda. The learned Joint District Judge, Nadiad, by impugned judgment and order dated 15th February, 1994, confirmed findings recorded by the trial Court as to the acquisition of alternative accommodation by the defendant, the raising of the permanent structure and causing damage and wastage to the suit house. However, the lower appellate Court reversed the finding as regards unlawful

subletting. The lower appellate Court held that the defendant had unlawfully transferred the suit house. The plaintiff, therefore, was entitled to a decree for eviction. Accordingly, the Appeal has been allowed and the decree for eviction has been passed against the defendant. Therefore, the present Revision Application.

Pending the suit, a Court Commissioner was appointed to make spot inspection of the suit house. Accordingly, the Court Commissioner had visited the suit house on 6th August, 1981. The Court Commissioner also gave oral evidence [Exh. 53]. The panchnama prepared by the Court Commissioner has been produced at Exh. 54. The lower appellate court, considering the oral evidence of the plaintiff, panchnama Exh. 54, the map Exh. 55 and the evidence of the defendant Exh. 38 held that the defendant and his family were not residing in the suit premises and instead the defendant had permitted one Bhavanlal and others to reside in the suit house. Considering this and the other evidence, the lower appellate court held that the suit premises was given on license or the interest in the suit premises was transferred without the permission of the plaintiff. The plaintiff was, therefore, entitled to decree for eviction as envisaged by Section 13 (1)(ee) of the Rent Act.

Mr. Shukla has submitted that the lower appellate Court has erred in holding that the defendant had unlawfully sublet or transferred the suit house to the strangers. He has submitted that, by catena of judgments, it has been settled that to prove subletting the landlord has to prove that the possession of the rented premises is transferred by the tenant to the stranger for monetary consideration. In the present case, neither of the said two essential ingredients is proved. In absence of such proof, no decree for eviction could be passed against the defendant on the ground of unlawful subletting. He has submitted that it has been proved on evidence that the defendant was residing in the suit house with his nephew and his wife. The nephew and his wife being the family members of the defendant, the defendant cannot be said to have acted in contravention of the terms of the tenancy. He has read over the evidence of the defendant Exh. 38 and the panchnama Exh. 54. In support of his argument, he has relied upon the judgment of this Court in the matter of **M/s. Rameshchandra K. Patwa & Ors. v. Vithaldas Chimanlal & Ors.** [1993 (1) GLR 193].

I do agree that the plaintiff failed to prove that the defendant no. 1 had unlawfully sublet, transferred or assigned the suit house or any part of it so as to invite a decree for eviction. It has not been proved that the

defendant no. 1 had transferred his right or interest in the suit house to the defendant no.2 or any other person to the exclusion of himself or that the defendant no. 2 or other persons were found to be in legal possession of the suit house. Nevertheless, the evidence of the defendant no. 1 [Exh.38] and the panchnama [Exh.54] do establish that the defendant no. 1 had been using the suit house for the lodging of his employees and for storing grocery, utensils and other paraphernalia of his business of hotel and catering. The defendant no. 1 did not dispute that he had taken the suit house for the residence of himself and his family. Thus, in my view, the plaintiff did successfully establish that the defendant no. 1, in contravention of the terms of tenancy, changed the user of the suit house or that he did not use the suit house for the purpose for which it was leased. The plaintiff is, therefore, entitled to a decree for eviction as envisaged by Section 13 (1)(k) of the Rent Act.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is *discharged*. *Interim* relief stands vacated.

At the request of learned advocate Mr. Shukla, it is directed that the decree for eviction passed against the petitioner-defendant may not be executed till **16th August, 2005** on condition that any amount of rent outstanding

shall be paid by the petitioner on or before 1st August, 2005.

{Miss R.M Doshit, J.}

*Prakash**